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In re Application of

Hisatoshi Hirota

Application No. 09/541,779

Filed: April 3, 2000

For: Capacity Controller of Capacity  
Variable Compressor

Director's Office  
Group 3700

: DECISION ON PETITION

Paper No. 14

This is a decision on the petition as embodied in the paper styled "Supplemental Information for Petition to Withdraw Holding of Abandonment", filed by facsimile transmission on September 24, 2004. It appears that a petition to withdraw a holding of abandonment for failure to reply to the Office letter dated May 9, 2001 was previously filed on March 11, 2002 by facsimile transmission, but is not in the record. The petition is being considered under 37 CFR 1.181, and no fee is required.

The petition is dismissed.

Petitioner alleges that this application is not abandoned because petitioner did not receive a complete Office action dated May 9, 2001, but instead received only a PTO-90C cover sheet, a PTO-413 form comprising two pages, which recorded an interview with the examiner, and a Notice of Draftsperson's Patent Drawing Review.

It is not clear from the petition whether the March 11, 2002 filing was filed by Mr. James E. Nilles, who was formerly the attorney of record, or whether it was filed by current counsel. However, it appears from the September 24, 2004 that the docket records for this file no longer exist, and that an "Office Action or Examiner's Letter" were in fact received. However, the file jacket and computer word processing files have been reviewed by current counsel and appear to indicate that no Response to an Office Action was ever prepared or attempted. Handwritten notes left by Mr. Nilles dated February 22, 2002 state the he had only received an interview summary and never received the action.

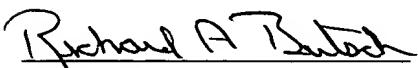
A review of the record shows that an interview summary form was attached to the Office letter in question. That summary indicates that in view of the interview, a preliminary amendment would be filed. There is a preliminary amendment of record dated April 30, 2001 but the May 9, 2001 Office letter does not acknowledge receipt thereof.

Petitioner is not, in effect, alleging nonreceipt of Office correspondence. Rather, petitioner is alleging receipt of incomplete Office correspondence, and that petitioner, through counsel at the time of the receipt of incomplete Office correspondence, had no reason to believe that what was mailed to petitioner on May 9, 2001 was an Office action at all, as opposed to being simply an interview summary form and a requirement regarding objections to the drawings. However, this allegation is not supported by any evidence supplied directly by former counsel, Mr. Nilles. Rather, this allegation, on the current record, amounts to no more than speculation based upon a handwritten note dated more than nine months after receipt of the May 9, 2001 papers. There is no explanation of what steps, if any, were taken on behalf of petitioner with respect to the practice set forth in MPEP § 710.06, and why no steps appear to have been taken. It is noted that the practice set forth in MPEP § 710.06 clearly indicates that if there is an error in an Office action and the error is not called to the attention of the Office until after expiration of the reply

period, the period will not be restarted. Absent more information regarding the matter, there does not appear to be a basis for withdrawing the holding of abandonment at this time.

Petitioner may file a renewed petition, without fee. The renewed petition should be directed to Technology Center 3700 at the address in the letterhead above. The renewed petition must be filed within two months of the date of this decision, or it will not receive consideration on the merits. See 37 CFR 1.181(f). The renewed petition should the matters discussed above. As a courtesy, a complete copy of the Office letter dated May 9, 2001 is attached to this Decision

PETITION DISMISSED.



Richard A. Bertsch, Director  
Technology Center 3700

Enclosure

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